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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAI'I

----- In the Matter of -----)
)
PUBLIC UTILITIES COMMISSION) DOCKET NO. 05-0002
)
Instituting a Proceeding to Investigate the)
Issues and Requirements Raised by, and)
Contained in, Hawai'i Revised Statutes)
486H, as Amended)
_____)

SHELL OIL COMPANY'S RESPONSE TO ORDER 22056

AND

CERTIFICATE OF SERVICE

FILED
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PUBLIC UTILITIES
COMMISSION

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SHELL OIL COMPANY'S RESPONSE TO ORDER 22056

SHELL OIL COMPANY ("Shell") respectfully submits its response to the Public Utilities Commission of the State of Hawai'i's ("Commission") Order No. 22056 issued on September 28, 2005.

By Order 22056, the Commission has requested: (1) "a *marketing margin proposal* further refining the class of trade approach suggested by ICF Consulting, or any another [sic.] more appropriate marketing margin proposal based on suitable benchmarks consistent with HRS Chapter 486H;" and (2) "a proposal to adjust the HRS § 486H-13 factors to include the addition of *ethanol requirements*, which will take effect on or about April 2006. *See* Order 22056, at 3 (emphasis added).

I. **DISCUSSION**

A. **The Commission Should Discontinue Implementation Of The Gas Cap Law**

Shell hereby responds that the Commission's implementation of Hawai'i's gasoline price cap law codified in Hawai'i Revised Statutes ("HRS") chapter 486H (the "Gas Cap Law") was improper and requests that the Commission discontinue its enforcement of the Gas Cap Law.

We have previously advised the Commission of material flaws in the Gas Cap Law including but not limited to: (1) significant gasoline supply risks; (2) impact to gasoline stations, market participants and consumers on the neighbor islands and in remote areas; and (3) legal deficiencies such as the failure to comply the mandatory legislative task force requirement of Act 242 and the inherent constitutional problems (e.g. separation of powers, improper delegation of legislative authority and violation of the Dormant Commerce Clause). *See* Shell Position Statement, at 17-22, 26-48, and 57-

60. These flaws will continue to result in numerous problems such as those identified by CHEVRON U.S.A., INC. ("Chevron") and TESORO HAWAII CORPORATION ("Tesoro") in their responses to Order No. 22056 filed herein.

As a further matter, we have previously advised the Commission that the impact of the ethanol legislation is unknown and substantial. The Commission's retained expert ICF Consulting, LLC ("ICF") opined that when combined with the ethanol legislation, gasoline marketers and refiners are faced with an "extraordinary and legitimate concern." See ICF's Response to SHELL-IR-17(a). However, neither ICF's Implementation Recommendations ("ICF Report") nor the Gas Cap Law addressed the impact of ethanol legislation. See Shell Position Statement, at 24. This significant omission is a material flaw in both ICF's Report and the Gas Cap Law which warrants, at a minimum, a suspension of the Gas Cap Law when the ethanol legislation goes into affect. Even ICF properly advised the Commission that the Gas Cap Law should be limited to "calculation and monitoring until the Ethanol mandate is in place *and functional*." ICF's Response to CA-IR-1 (emphasis added); *see also* Shell Position Statement, at 26.

Accordingly, the Commission should discontinue its enforcement of the Gas Cap Law or, at a minimum, suspend the Gas Cap Law until "the Ethanol mandate is in place *and functional*."¹

B. Marketing Margins

Notwithstanding the above, Shell hereby responds to the Commission's request for a marketing margin proposal by pointing out that Shell does not market through the

¹ Shell specifically notes that nothing in this Response shall be construed to be a waiver of any of the rights, claims, or arguments Shell has, and will continue to pursue in its present ongoing appeal of Commission Decision & Order No. 21952 and Order No. 21994 in its represent Hawaii Supreme Court Appeal, S.C. No. 27496.

wholesale class of trade. Therefore, Shell respectfully defers to others to make meaningful suggestions as to the marketing margins.

However, if any changes are recommended that could incrementally impact the existing cap formula setting the prices Shell is allowed to charge its dealers, Shell requests an opportunity to evaluate and comment upon those recommendations.

On a related note, Shell does make one recommendation regarding the publication of gas cap figures. The Commission's decision to publicize the price cap figures on the Wednesday prior to their effective date the following Monday has lead to erratic consumer buying patterns. Consumers are naturally electing to change their buying patterns when they anticipate increases or decreases in gasoline prices. This has caused lines at stations and required additional expenses as Shell attempts to meet the fluctuating demand.

The original price cap was set based on mainland market conditions, but the publication of gas prices in advance of the actual change creates an environment that is substantially different than mainland market conditions. Shell does not recommend an increase in the gas cap formula at this time, but respectfully recommends the PUC consider an alternate means to notify the parties of the weekly cap prices (i.e. notify the parties by fax or email on the prior Wednesday, with a subsequent posting of the data on a public website once it becomes effective).

C. Ethanol Requirements

Shell is actively making plans to invest millions of dollars to ensure that Shell is able to meet the State's Ethanol mandate in April of 2006.

While Shell agrees with Tesoro's statement that the local Ethanol industry is in its infancy and many of the costs are unknown, Shell recognizes that the PUC is not commissioned to evaluate whether the ethanol mandate is appropriate.

Nevertheless, the Commission must understand that it is simply too early to estimate the total costs of ethanol blending and the true impact of the ethanol legislation. Any estimates would be premature and inaccurate.

Accordingly, Shell recommends that the Commission continue its dialog with industry to understand the infrastructure changes that will be necessary to physically comply with the ethanol mandate. Shell further recommends postponement of discussions regarding adjustments to the gas cap formula until approximately February 2006 when Shell will be better positioned to have a meaningful discussion of the issues.

II. CONCLUSION

As set forth herein, Shell respectfully requests that Commission discontinue its enforcement of the Gas Cap Law.

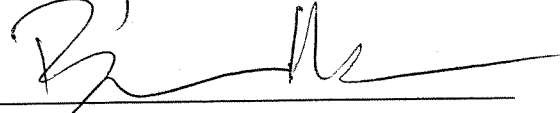
Shell does not have any proposals regarding the marketing margin factor at this time. However, Shell requests an opportunity to evaluate and comment upon any recommendations that could incrementally impact the existing cap formula setting the prices Shell is allowed to charge its dealers.

Shell recommends that the Commission not publicize price cap figures in order to control the volatility in demand which is causing supply disruptions.

Shell asserts that it is premature to estimate the total costs of ethanol blending. Shell recommends that the Commission continue to study the effects of the ethanol mandate and defer discussions regarding adjustments until February 2006 when more information will be available.

DATED: Honolulu, Hawai'i

Dec. 1, 2005

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CLIFFORD K. HIGA

BRUCE NAKAMURA

KENNETH M. NAKASONE

Attorneys for SHELL OIL COMPANY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above document was duly served upon the following parties in the manner described at their following last known addresses:

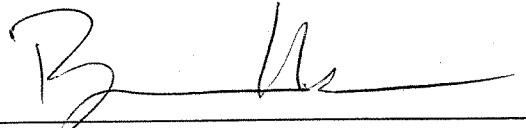
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DATED: Honolulu, Hawaii,

Dec. 1, 2005.

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